

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

J. LAFLEUR et al.,

Plaintiffs,

v.

Case No. 8:20-cv-1665-KKM-AAS

STATE UNIVERSITY SYSTEM OF
FLORIDA, et al.,

Defendants.

ORDER

Defendants move to dismiss Plaintiffs' First Amended Complaint and strike Plaintiffs' claim for punitive and treble damages. (Doc. 20.) The Magistrate Judge issued a report recommending that the Court grant Defendants' motion. (Doc. 74.)

Upon the Plaintiffs' request, the Court extended the fourteen-day deadline to file objections to the Report & Recommendation, yet no timely objections were filed. (Doc. 76.) After a de novo review, the Court concludes that the motion should be granted for the reasons stated in the Magistrate Judge's Report. (Doc. 74.) The Court concludes, though, that because sovereign immunity under the Eleventh Amendment bars Plaintiffs' claims, dismissal without prejudice is appropriate because the Court essentially lacks subject matter jurisdiction. *See Seaborn v. State of Fla., Dep't of Corr.*, 143 F.3d 1405, 1407 (11th Cir.

1998) (“An assertion of Eleventh Amendment immunity essentially challenges a court’s subject matter jurisdiction . . . [and] therefore may be asserted for the first time on appeal.”); *Stalley v Orlando Reg’l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008) (“A dismissal for lack of subject matter jurisdiction is not a judgment on the merits and is entered without prejudice.”). And “[i]f a court lacks subject matter jurisdiction, it also lacks the power to dismiss the complaint with prejudice as an adjudication on the merits.” *McQueary v. Child Support Enforcement*, 812 F. App’x 911, 914 (11th Cir. 2020) (vacating and remanding for “district court to reenter its judgment as a dismissal without prejudice” because dismissal based on lack of subject matter jurisdiction).

The following is **ORDERED**:

1. Defendants’ Motion to Dismiss and Strike (Doc. 20) is **GRANTED**.
2. This action is **DISMISSED without prejudice**.
3. The clerk is directed to enter judgment as dismissed for lack of subject matter jurisdiction, terminate all pending motions, and **CLOSE** this case.

ENTERED in Tampa, Florida, on August 23, 2021.


Kathryn Kimball Mizelle
United States District Judge